provisions of the Constitution. Thus in *Assa Singh* v. *Mentri Besar Johor,*[2] Ong Hock Thye C.J. (Malaya) in accepting the argument of Salleh Abas Solicitor-General (as he then was) had this to say at page 35 with reference to Restricted Residence Enactment as a pre-Merdeka legislation:

"In the third place, I agree that, since Article 4 speaks only of laws passed after Merdeka Day, the validity or otherwise of the pre-Merdeka Restricted Residence Enactment will have to be considered solely by reference to article 162. The point is summed up most admirably by the learned Solicitor-General as follows:–

'As to post-Merdeka law, the Constitution is supreme and if any of that law is inconsistent with the provisions of the Constitution, to the extent of such inconsistency that law shall be void – article 4(1). But as regards pre-Merdeka law, such law shall continue to be in force until repealed; in the meantime its continuity and enforceability is subject to modification, firstly by a Legislative Act or Enactment or, secondly, by process of judicial interpretation, the executive order of the Yang di-Pertuan Agong to modify the same having expired – article 162(1) and (6). It must be noted that article 162 does not use the expression that the pre-Merdeka law shall be void to the extent of the inconsistency but, instead, it expressly states that the law shall continue to be in force'."

In the circumstances, I am of the opinion that proceeding for a declaration under Article 4(4) read with Article 128(1)(a) applies only to post-Merdeka law whether Federal or State. Since S.S. Cap 175 is a pre-Merdeka law the present application should not have been brought to the Supreme Court as a court of first instance.

The notice of motion is accordingly dismissed and because of section 47 Courts of Judicature Act 1964, I make no order as to costs.

Motion dismissed.

Solicitors: *V. Muthusamy & Co.*

MAHAT BIN ABDUL MAJID & ANOR. v. LAU KUI & ANOR.

[S.C. (Abdul Hamid C.J. (Malaya), Abdoolcader & Wan Hamzah S.C. JJ.) January 21, 1986]

[Kuala Lumpur – Supreme Court Civil Appeal No. 240 of 1985]

Tort – Negligence – Collision between motor-cycle and motor-cyclist – Motor-cyclist and pillion rider injured – Question of liability.

Damages – Fracture of radius, ulna and right femur – General damages at $34,000.

Damages – Fracture of acetabulum and ramus of pubic bone – General damages at $40,000.

This was an appeal from the decision of Shankar J. in [1986] 1 M.L.J. 351. The Supreme Court unanimously held that the first plaintiff and the defendant equally liable for the accident. The appeal against quantum was not disturbed and judgment of the Supreme Court was incorporated in the Order of Court dated January 21, 1986 reproduced below.

SUPREME COURT.

N. Jegatheeson for the appellant.
M. Varughese for the respondent.

ORDER

THIS APPEAL coming up for hearing this day in the presence of Mr. N. Jegatheeson of Counsel for the Appellants and Mr. M. Varughese of Counsel for the Respondents *AND UPON READING* the Record of Appeal filed herein *AND UPON HEARING* Counsel as aforesaid *IT IS ORDERED* that this Appeal be and is hereby allowed with costs and that the judgment of the Honourable Mahadev Shankar J. dated June 18, 1985 be varied by directing that judgment be entered for the Appellants as follows:

1. Liability be and is hereby apportioned equally between the 1st Appellant and the 1st Respondent.
2. The 1st Appellant is responsible for 50% of the Counterclaim for damages by the Respondents.
3. The 2nd Appellant is entitled to the whole of the amount of damages.
4. Quantum for the 1st Appellant on 100% liability is as follows:

   (a) General damages for pain and suffering at Ringgit Thirty-Four Thousand ($34,000/=) with interest thereon at 8% per annum from date of service of Writ (*i.e.* 12-10-82) to date of Judgment (*i.e.* 21-1-86);

   (b) Special damages at Ringgit Four Thousand and Five Hundred ($4,500/=) with interest thereon at 4% per annum from date of accident (*i.e.* 12-8-81) to date of Judgment (*i.e.* 21-1-86);

   (c) Special damages for past loss of earning at Ringgit Thirteen Thousand and Three Hundred ($13,300/=) (being $700/= per month from 12-8-81 to 11-3-83) with interest thereon at 4% per annum from date of accident (*i.e.* 12-8-81) to date of Judgment (*i.e.* 21-1-86);

   (d) General damages for partial loss of earning at Ringgit Thirteen Thousand Six Hundred and Nineteen and Sen Thirty-Five ($13,619.35) (being $100/= per month for 17 years 2 months); and

   (e) Interest on the aforesaid sum of Ringgit Sixty-Five Thousand Four Hundred and Nineteen and Sen Thirty-Five ($65,419.35) at 8% per annum

from date of Judgment (*i.e.* 21-1-86) to date of satisfaction.

5. Quantum for the 2nd Appellant on 100% liability is as follows:

(a) General damages for pain and suffering at Ringgit Forty Thousand ($40,000/=) with interest thereon at 8% per annum from date of service of Writ (*i.e.* 12-10-82) to date of Judgment (*i.e.* 21-1-86);

(b) Special damages at Ringgit Six Hundred ($600/=) with interest thereon at 4% per annum from date of accident (*i.e.* 12-8-81) to date of Judgment (*i.e.* 21-1-86); and

(c) Interest on the aforesaid sum of Ringgit Forty Thousand and Six Hundred ($40,600/=) at 8% per annum from date of Judgment (*i.e.* 21-1-86) to date of satisfaction.

AND IT IS FURTHER ORDERED that the Respondents do pay the 1st and 2nd Appellants the Costs here and below to be taxed *AND IT IS LASTLY ORDERED* that the deposit of $500/= paid into Court by the Appellants as security for costs of this Appeal be refunded to the Appellants.

GIVEN under my hand and the Seal of the Court this January 21, 1986.

Sd. Soo Ai Lin
Senior Assistant Registrar
Supreme Court, Malaysia.

Solicitors: *John Ang & Jega; Varughese & Co.*

MAMAT BIN DAUD & ORS. v. GOVERNMENT OF MALAYSIA

[S.C. (Mohamed Azmi S.C.J.) February 14, 1986]

[Kuala Lumpur – Supreme Court Civil Application No. 26 of 1985]

Constitutional Law – Application for leave to challenge Act of Parliament – Whether penal offences introduced by the Penal Code and the Criminal Procedure Code (Amendment) Act 1983 are ultra vires the Federal Constitution – Federal Constitution, arts. 3, 4 & 74(1).

The applicants in this case applied for leave under Article 4(4) of the Federal Constitution. The issue in the case was whether the penal offences introduced by the new section 298A of the Penal Code by the Penal Code and Criminal Procedure Code (Amendment) Act 1983 are *ultra vires* Article 74(1) of the Federal Constitution as being in excess of the legislative power of Parliament.

Held: (1) in this case the validity of the legislation is to be challenged on the ground that it deals with a matter with respect to which Parliament has no power to make law. As such leave of the Court is required under Article 4(4) of the Federal Constitution;

(2) the application is not frivolous and the applicants should be allowed to canvass their case before the full court on the constitutionality and validity of the new section 298A of the Penal Code.

Cases referred to:

(1) *East Union (Malaya) Sdn. Bhd.* v. *Government of the State of Johore and Government of Malaysia* [1981] 1 M.L.J. 151.

(2) *Ramasamy a/l Shanmugam* v. *State Government of Penang and Government of Malaysia* [1986] 2 M.L.J. 188.

SUPREME COURT.

G. Sri Ram for the applicants.

T. Selventhiranathan, Senior Federal Counsel, for the respondent.

Mohamed Azmi S.C.J.: When I granted the applicants leave under Article 4(4) of the Federal Constitution, I indicated that I would give my reasons for allowing the notice of motion. I now proceed to do so.

The issue in this case is whether the penal offences introduced by the new section 298A of the Penal Code by the Penal Code and Criminal Procedure Code (Amendment) Act 1983 (Act A549) is *ultra vires* Article 74(1) as being in excess of the legislative power of Parliament. *Inter alia,* the new section makes it a penal offence for any person to cause disharmony, disunity or feelings of enmity, hatred or ill-will, on grounds of religion, between persons or groups of persons professing the same or different religions. The offence is punishable with imprisonment for a term which may extend to three years, and if committed in the proximity of any place of worship or in any assembly engaged in the performance of religious worship or religious ceremony the imprisonment term may extend to five years. It is common ground that the word "religion" in the new section is intended by Parliament to cover all religions including Islam. Mr. Sri Ram, counsel for the applicants submits that by virtue of Article 74 and item (1) of the State List in the Ninth Schedule to the Federal Constitution, Parliament has no legislative competence to enact the new section to cover the religion of Islam because it has inter alia no power to legislate either law to cover Islamic law, or law relating to personal and family law of persons professing the religion of Islam; and nor has Parliament any power to enact law with respect to mosques or any public places of worships;